



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF E-S- INC.

DATE: JAN. 19, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a provider of software development and testing services, seeks to employ the Beneficiary as a lead software engineer. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant category. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This category allows a U.S. business to sponsor a professional with an advanced degree or its equivalent for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition. The Director concluded that the record did not establish the Beneficiary's possession of the minimum education required for the offered position.

On appeal, the Petitioner asserts that the Director misinterpreted evidence and submits additional materials in support of the Beneficiary's educational qualifications.

Upon *de novo* review, we will dismiss the appeal.

I. LAW AND ANALYSIS

A. The Employment-Based Immigration Process

Employment-based immigration is generally a three-step process. First, a prospective U.S. employer must obtain an approved ETA Form 9089, Application for Permanent Employment Certification (labor certification), from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). Next, the employer files Form I-140, Immigrant Petition for Alien Worker, with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Finally, if USCIS approves the petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

By approving the labor certification in this case, the DOL certified that U.S. workers are not able, willing, qualified, and available for the offered position of lead software engineer. See section 212(a)(5)(A)(i)(I) of the Act. The DOL also certified that the Beneficiary's employment in the position will not hurt the wages and working conditions of U.S. workers with similar jobs. See section 212(a)(5)(A)(i)(II).

In these proceedings, we must determine whether the Beneficiary meets the requirements of the offered position certified by the DOL. We must also determine whether the Beneficiary qualifies for the requested immigrant classification. See, e.g., *Tongatapu Woodcraft Haw., Ltd. v Feldman*, 736 F.2d 1305, 1309 (9th Cir. 1984) (holding that the immigration service "makes its own determination of the alien's entitlement to [the requested] preference status").¹

B. The Beneficiary's Possession of the Education Required by the Labor Certification

A petitioner must establish a beneficiary's possession of all the education, training, and experience specified on an accompanying labor certification by a petition's priority date. 8 C.F.R. § 103.2(b)(1), (12); see also *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *Matter of Katighak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).² In evaluating a beneficiary's qualifications, we must examine the job offer portion of a labor certification to determine the minimum requirements of an offered position. We may neither ignore a term of the labor certification, nor impose additional requirements. See *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1009 (9th Cir. 1983); *Madany v. Smith*, 696 F.2d 1008, 1012-13 (D.C. Cir. 1983); *Stewart Infra-Red Commissary of Mass., Inc. v. Coomey*, 661 F.2d 1, 3 (1st Cir. 1981).

The labor certification states the minimum requirements of the offered position of lead software engineer as a U.S. master's degree or a foreign equivalent degree in radiophysics, applied mathematics, computer science, or engineering. The Petitioner indicated on the labor certification that it will not accept an alternate combination of education and experience.

The Beneficiary attested on the labor certification to his receipt of a master's degree in radiophysics from [REDACTED] Belarus, in 1999. The record contains a copy of a June 21, 1999, "diploma" from the university, indicating the Beneficiary's qualification as a "Radiophysicist." A copy of a transcript indicates that, before receiving the diploma, the Beneficiary studied five years at the university. The record also contains two other diplomas from the university, both dated June 30, 1999. One indicates the Beneficiary's receipt of a bachelor's degree in commerce; the other states his qualification as an "Economist-manager."

¹ Here, the Petitioner has requested advanced degree professional classification. To be eligible for this classification, the Beneficiary must possess an advanced degree. The term "advanced degree" means "any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree." 8 C.F.R. § 204.5(k)(2).

² In this case, the petition's priority date is December 22, 2014. This is the date the DOL received the labor certification application for processing. See 8 C.F.R. § 204.5(d).

The Petitioner submitted expert opinions regarding the Beneficiary's foreign educational credentials. The materials include the following:

- Credential evaluation from [REDACTED] concluding that the Beneficiary's radiophysicist and economist-manager diplomas equate to U.S. master's degrees in radiophysics and economics based on the Beneficiary's coursework, credit hours, years of study, and grades earned;
- Course analysis from [REDACTED] finding the Beneficiary's commerce diploma equivalent to a U.S. bachelor of business administration degree and his radiophysicist diploma equivalent to U.S. bachelor's and master's degrees in radiophysics based on the Beneficiary's transcript and "Diploma of Specialist" (the record does not reflect a credential called Diploma of Specialist); and
- Evaluation from [REDACTED] and [REDACTED] finding the Beneficiary's radiophysicist diploma equivalent to a U.S. bachelor of science degree in radiophysics based on the Beneficiary's coursework and examination results. Both evaluations also combined the radiophysicist diploma and more than five years of progressive professional experience to find that the Beneficiary has the equivalent of a U.S. master's degree in computer science.

The evaluations from [REDACTED] and [REDACTED] which found the Beneficiary's radiophysicist diploma equivalent to a U.S. master's degree, conflict with the evaluations from [REDACTED] and [REDACTED]. Excluding the Beneficiary's employment experience, the [REDACTED] and [REDACTED] evaluations found the radiophysicist diploma equivalent to a bachelor's degree, not a master's degree. The conflicting evaluations therefore do not establish the Beneficiary's possession of a U.S. master's degree or a foreign equivalent degree as specified on the labor certification. A petitioner bears the burden of establishing eligibility for a requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. To establish the Beneficiary's possession of a U.S. master's degree or a foreign equivalent degree as specified on the labor certification, the Petitioner must resolve the discrepancies in the evaluations. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record by independent, objective evidence pointing to where the truth lies).

Given the conflicting evidence presented, we sent a notice of intent to deny (NOID) to the Petitioner, advising that we consulted the Electronic Database for Global Education (EDGE), an online database created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).⁴ Federal courts have found EDGE to be a reliable, peer-reviewed source of foreign

³ The [REDACTED] evaluation bases its conclusions in part on the number of university credits the Beneficiary earned. The evaluation, however, does not state how many credits he obtained or how they equate to U.S. university credits.

⁴ AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education professionals who represent approximately 2,600 institutions in over 40 countries." www.aacrao.org/about (last visited Jan. 16, 2017). According to its registration page, EDGE is "a web-based resource for the evaluation of foreign educational credentials." <http://edge.aacrao.org/info.php> (last visited Jan. 16, 2017).

educational equivalencies. *See, e.g., Viraj, LLC v. U.S. Att'y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (holding that USCIS may discount submitted opinion letters and educational evaluations submitted if they differ from reports in EDGE, which is “a respected source of information”). According to EDGE, the five-year diploma of higher education from Belarus is comparable to a U.S. bachelor's degree.⁵

In response to our NOI, the Petitioner denies that the evaluations in the record were inconsistent. The Petitioner states that the evaluations from [REDACTED] and [REDACTED] did not consider the U.S. equivalency of the Beneficiary's radiophysicist diploma on its own. Rather, counsel asserts that the Petitioner asked the evaluators to provide equivalencies based on a combination of the Beneficiary's education and experience. The Petitioner states that the evaluations from [REDACTED] and [REDACTED] state that the Beneficiary's diploma is equivalent to “at least” a bachelor's degree, and that as such, the evaluations' conclusions do not contradict the other opinions stating the equivalency of the Beneficiary's radiophysicist diploma to an advanced degree. Although these evaluations do conclude that the diploma is equivalent to “at least” a bachelor's degree, they do not assert that the Beneficiary's diploma is equivalent to a master's degree and as such, they are inconsistent with the [REDACTED] and [REDACTED] evaluations, and do not support the Petitioner's claims.

The Petitioner also submits another expert opinion of the Beneficiary's foreign educational credentials in response to the NOI. This evaluation from [REDACTED] found that the Beneficiary has the equivalent of a U.S. master's degree in applied mathematics based on a combination of his radiophysicist diploma and doctoral studies in Belarus from 2004 to 2008.⁶ The conclusion reached in the [REDACTED] evaluation is again inconsistent with the [REDACTED] and [REDACTED] evaluations. Similar to the evaluations of [REDACTED] and [REDACTED] the [REDACTED] evaluation does not conclude that the Beneficiary's radiophysicist diploma equates to a U.S. master's degree on its own.

The Petitioner further resubmits a 2013 report from EDGE for a [REDACTED] diploma of specialist, which states that this credential is awarded after five or six years of university studies, and is

⁵ Our NOI to the Petitioner stated that a printout of the current EDGE report on [REDACTED] diplomas of higher education was attached. The Petitioner, however, states that the NOI omitted the EDGE report and requests a printout before any appellate dismissal. *See* 8 C.F.R. § 103.2(b)(16)(i) (requiring us, before issuing an adverse decision, to notify a petitioner of material, derogatory information of which it is unaware and to afford it an opportunity to respond). Our NOI, however, sufficiently summarized the derogatory information in the current EDGE report. We therefore need not re-send a printout of the report to the Petitioner before issuing an adverse decision. *See Ogholumani v. Napolitano*, 557 F.3d 729, 735 (7th Cir. 2009); *Ghaly v. INS*, 48 F.3d 1426, 1434 (7th Cir. 1995) (holding that USCIS may provide a petitioner with a summary of derogatory evidence, rather than the actual derogatory documentation); *see also Mangwiwo v. Johnson*, 554 Fed. Appx. 255, 261-62 (5th Cir. 2014); *Sardo v. Dep't of Homeland Sec.*, 284 Fed. Appx. 262, 266 (6th Cir. 2008); *Diaz v. USCIS*, 499 Fed. Appx. 853, 855-56 (11th Cir. 2012) (same).

⁶ Despite the Beneficiary's doctoral studies, the record does not indicate his receipt of a doctorate degree. Thus, the Beneficiary's radiophysicist diploma is his only university credential of record in a field acceptable for the offered position. Additionally, the Beneficiary may not meet the terms of the labor certification using a combination of education found to be the equivalent level of education of a master's degree, as the Petitioner stated on the labor certification that it will not accept an alternate combination of education and experience in lieu of a master's degree.

comparable to a U.S. master's degree. Although the Beneficiary's five-year radiophysicist diploma is not identified as a diploma of specialist, the Petitioner asserts that the credential is a specialist diploma, representing a combination of bachelor's and master's degrees. The Petitioner also asserts that Belarus amended its higher educational system in 2013, and that in lieu of five-year specialist diplomas, [REDACTED] universities now reportedly issue four-year bachelor's degrees and two-year master's degrees. Because the Beneficiary obtained his radiophysicist diploma before that claimed systemic change, the Petitioner asserts that we improperly relied on the current EDGE report, which, the Petitioner claims, refers only to the new [REDACTED] four-year degree.

However, as we stated in our NOID, EDGE no longer includes a separate entry for a diploma of specialist. Rather, EDGE equates a [REDACTED] diploma of higher education, reflecting four or five years of university studies, to a U.S. bachelor's degree. The updated report states that a diploma of higher education may follow not only four years of university study, but also five. The updated report also states: "The Diploma of Higher Education is also often referred to, and sometimes written as, Diploma of Specialist." Thus, EDGE's updated report on the [REDACTED] diploma of higher education appears to describe the Beneficiary's diploma, which he received after five years of study and which the Petitioner calls a specialist diploma. Further, we reached out to the EDGE Admin Group with respect to the updated entry, and they indicated that: "The consensus of the IESC [International Education Standards Council] then [prior to the update] and now is that this is a first degree comparable to a US bachelor's degree. Any other indication is an error that, if made, was certainly not perpetuated." The IESC is responsible for vetting the credentials listed in EDGE.⁷

On appeal, the Petitioner asserts that we improperly relied on the current EDGE report and disregarded the "authoritative alternative evaluations" that it submitted. Contrary to the Petitioner's assertion, however, we do not find the materials it submitted to be "authoritative." We may reject or give less evidentiary weight to expert opinions that conflict with evidence of record or that are "in any way questionable." *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). Here, the inconsistent evaluations submitted by the Petitioner do not establish the Beneficiary's possession of a U.S. master's degree or a foreign equivalent degree as specified on the labor certification.

When faced with conflicting opinions about the U.S. equivalency of a foreign educational credential, USCIS did not err in consulting current EDGE information in an attempt to resolve the inconsistencies.⁸ Moreover, as discussed above, discounting the current EDGE report would not establish the Beneficiary's possession of a U.S. master's degree or a foreign equivalent degree.

⁷ <http://www4.aacrao.org/committees/?committee=IESC> (last visited Jan. 16, 2018).

⁸ In *Confluence Int'l, Inc. v. Holder*, No. 08-2665 (DSD/JJG), 2009 WL 825793 (D. Minn. Mar. 27, 2009), the court determined that we provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, No. 09-cv-10072, 2010 WL 3464314 (E.D.Mich. Aug. 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien's three-year foreign "baccalaureate" and foreign "Master's" degree were only comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc. v. USCIS*, No. 09-13605, 2010 WL 3325442 (E.D.Mich. Aug. 20, 2010), the court upheld a USCIS determination that the alien's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information

II. CONCLUSION

The record does not establish the Beneficiary's possession of the minimum education required for the offered position as specified on the labor certification. We will therefore affirm the Director's decision.

ORDER: The appeal is dismissed.

Cite as *Matter of E-S- Inc.*, ID# 081841 (AAO Jan. 19, 2018)

in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.